

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY D. OKOKURO	:	CIVIL ACTION
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF WELFARE and	:	
DON JOSE STOVALL	:	No. 00-2044

FINDINGS OF FACT AND CONCLUSIONS OF LAW

J. M. KELLY, J. **MAY** , 2001

The pro se Plaintiff in the above captioned matter, Anthony D. Okokuro ("Okokuro"), filed suit in this Court, alleging that the Defendants retaliated against him and discriminated against him because of his race and national origin. The Defendants, Don Jose Stovall and the Commonwealth of Pennsylvania, Department of Public Welfare ("DPW") (collectively referred to as the "Defendants"), originally filed a Motion to Dismiss, which the Court denied. The Defendants subsequently filed a Motion for Summary Judgment, which the Court granted in part and denied in part. Although the Court precluded Okokuro from proceeding with some of his claims, the Court found that Okokuro could bring claims for national origin and racial discrimination because he had alleged facts sufficient to invoke the continuing violations doctrine. The case proceeded to a bench trial on April 18, 2001. The following represents the Court's findings of fact, conclusions of law and decision based on the evidence presented at that trial.

I. FINDINGS OF FACT

1. Okokuro is an adult male and a United States citizen. He is an African-American of Nigerian origin. Tr. at 41.
2. Okokuro began working for DPW on December 31, 1991. Id. at 27.
3. In January, 1992, DPW transferred Okokuro to its Girard District Office. Id. at 28.
4. At that time, Okokuro was married to a white woman.
5. Okokuro's supervisor at the Girard Office was Ms. Vernell Grant ("Grant"). Id. Grant is an African-American woman.
6. Okokuro testified that Grant: (1) pointed to a poster for the movie "Jungle Fever" which was posted at her work station and told Okokuro that she "likes her coffee black . . . like her men"; (2) called Okokuro's wife "white trash"; (3) raised her dress in order to show him her thigh; (4) gave him extra work in order to deter him from complaining; and (5) asked him to provide documentary proof that he was a United States Citizen. Id. at 9-11, 49.
7. Grant denied these allegations. Id. at 46-49. With regard to the coffee statement, Grant testified that such a comment would have been "out of character" for her, id. at 49, although she first testified on direct that "I have a sense of humor. I might have said that sometime. I do not recall saying anything like that to him." Id. at 47.

8. The Court finds that Grant's testimony was more credible than Okokuro's. First, Okokuro was unable to produce a witness who would corroborate his version of the facts. Second, Okokuro's testimony revealed confusion over whether Grant had stated that she, or Okokuro's wife, likes her coffee black like her men. Compare id. at 9 ("[Grant] had made reference, because my wife is a Caucasian that she . . . likes her coffee black just the way she like her men. . . .") with id. at 49 ("[Isn't it true that in] your office there was a "Jungle Fever" poster and you pointed to that poster and told me that you liked your coffee black, just like you like your men?").
9. The Court therefore finds that Grant did not behave in the manner alleged by Okokuro.
10. On March 4, 1993, Okokuro filed a grievance with his union about Grant's actions. Id. at 10. Grant's supervisor, Ms. Gloria Hamilton, met with Okokuro regarding his allegations. Id. In or about June, 1993, DPW transferred Okokuro to a new supervisor, Ms. Jarrett. Id. at 32.
11. Okokuro made several requests to be transferred to another district, which were rejected. Finally, in January, 1994, DPW transferred him to its Elmwood District Office. Id. at 11.
12. Okokuro testified that he believed an unidentified employee

from the Girard Office went to the Elmwood Office to "sow in a bad seed" by telling them he was homosexual. Id. at 11. Other than Okokuro's suspicion, this allegation was not supported by any credible evidence.

13. The Court therefore finds that no DPW employee from the Girard Office went to the Elmwood Office to taint their perception of Okokuro.
14. Okokuro's first supervisor at the Elmwood Office was Ms. Kathryn White ("White"). Id. White did not testify at trial, and neither party presented evidence concerning her race or national origin.
15. During an annual performance review, the date of which was not revealed at trial, White asked Okokuro what kind of car he drove and asked where he got all of his money to buy his clothes and car. Id. at 12, 34.
16. White did not ask that type of question during annual performance review of Ms. Marilyn Robinson ("Robinson"), another DPW employee. Id. at 13. Robinson did not testify at trial. Robinson's race or national origin were not offered at trial.
17. Okokuro stated that the performance review "made me feel bad, I felt like I had been singled out and she thinks maybe I am a drug dealer." Id. at 34. Okokuro concedes, however, that those questions were the only allegedly discriminatory

- conduct White directed at him. Id.
18. While Okokuro worked there, the Elmwood Office put on an AIDS seminar to instruct employees how to deal with clients that had AIDS or HIV. Id. at 26-27. The date, or even the year, of this seminar was not revealed at trial.
19. Okokuro testified that White strongly encouraged Okokuro to attend the seminar, which was voluntary. Id. at 26, 34. Ms. Sandra Baytops ("Baytops"), the Elmwood District Office's Income Maintenance Manager, and Mr. David Miller ("Miller"), a future supervisor of Okokuro's, testified that it was mandatory. Id. at 65, 55.
20. The Court finds that the testimony of Baytops, and Miller, was more credible than Okokuro's on this issue. Although the Court finds below that Miller's credibility was damaged by his personal animosity towards Okokuro, his testimony, coupled with Baytops's, is more credible than Okokuro's on this specific point. Moreover, despite encouragement from the Court, Okokuro failed to amend his proposed findings of fact to include contrary testimony given by Baytops or Miller during a hearing before the Pennsylvania Civil Service Commission (the "Commission"). Id. at 60.
21. The Court therefore finds that the AIDS seminar was mandatory, and that White encouraged Okokuro to attend the seminar merely because it was required of all Elmwood

- employees, not out of animus directed at Okokuro because of his race or national origin.
22. Okokuro also testified that Baytops told him to attend the AIDS seminar because "there are a lot of AIDS cases in Africa," his continent of origin. Id. at 26. Baytops denied ever saying this to Okokuro. Id. at 66, 78.
23. The Court finds that Baytops testimony regarding the AIDS seminar was more credible than Okokuro's. Because Okokuro's allegation was unsupported by the evidence other than his own testimony, id. at 66, 78, the Court finds that Baytops did not suggest Okokuro attend the seminar because he was of African origin.
24. Okokuro was then transferred to a new Elmwood Office supervisor, Miller, in March, 1996. Id. at 52. Miller is a white male.
25. Okokuro testified that Miller treated him "quite different than anyone else." Id. at 14. Specifically, Okokuro claimed that Miller called him "stupid" and "dumb" in front of his colleagues. Id.
26. Miller denies making those statements. Id. at 55. Miller claimed to treat everyone the same because he has a "direct" and "excitable" managerial style that has offended other DPW employees in the past. Id. at 58.
27. The Court finds that Miller is clearly an extremely

excitable and high-strung person that is most likely rude to many other DPW employees. His personal dislike for Okokuro, however, was palpable during Miller's cross-examination; despite Okokuro's quiet and respectful demeanor, Miller was rude to Okokuro and was visibly disturbed with being cross-examined by him.

28. The Court finds that, because of Miller's obvious dislike for Okokuro, Okokuro's testimony was more credible than Miller's.
29. The Court therefore finds that Miller would occasionally be rude to Okokuro and, in front of Okokuro's colleagues, call him stupid or dumb. Although Okokuro was unable to offer specific dates for these acts, the Court finds that they occurred with some regularity until at least September 13, 1996, when Okokuro was transferred to another supervisor.
30. The Court further finds, however, that Okokuro presented no evidence, other than his assertion that Miller has "problems with black men," id. at 62, that Miller's actions were directed at Okokuro because of Okokuro's race or national origin.
31. The Court therefore finds that Miller's treatment of Okokuro was not the result of discriminatory animus, but rather Miller's obvious personal dislike for Okokuro.
32. On August 13, 1996, Miller instructed Okokuro to reschedule

- an appointment for a DPW client who had missed her scheduled appointment. Id. at 52.
33. Miller testified that Okokuro refused to do so because Okokuro wanted to close the client's case instead. Id. at 52-53. Okokuro denies that he failed to follow instructions. Id. at 15-16, 37.
34. On August 29, 1996, Miller issued Okokuro with a written reprimand because he felt Okokuro had failed to follow his instructions. Id. at 15-17, 52-53.
35. Okokuro pursued an internal appeal of his reprimand. Id. at 18, 75. Although Okokuro claims that Baytops intentionally withheld information that would have exonerated him, id. at 75, he was nonetheless cleared of any wrongdoing. The Commission dismissed his reprimand because Baytops failed to "conduct a thorough investigation of the facts before implementing discipline." Id. at 18, 75.
36. For the reasons mentioned above, the Court finds that Okokuro's testimony regarding his reprimand was more credible than Miller's.
37. The Court therefore finds that Okokuro did not disobey Miller's instructions regarding the scheduling of the DPW client's appointment.
38. On September 13, 1996, Okokuro, Baytops and Miller met to discuss Okokuro's complaints about Miller's treatment of

- him. Id. at 38.
39. Okokuro often kept a tape recorder with him at work to play music when he was feeling stressed. Id. at 21. Because Okokuro feared that his rights had been violated in the past and were going to be violated during his meeting with Miller and Baytops, he brought the tape recorder with him to the meeting. Id. at 39.
40. Miller and Baytops testified that Okokuro had taped the entire meeting without permission. Id. at 57, 68, 76-78. They based this testimony on their beliefs that Okokuro had told them that, when Okokuro revealed the tape recorder, he stated "I have it right here" or "I have it - now I have proof [that] you have been putting words in my mouth." Id. at 57, 68, 76-78.
41. Okokuro testified that, about fifteen or twenty minutes into the meeting, he asked for permission to tape the remainder of the meeting. Id. at 21. Although Miller and Baytops were stunned that he had brought a tape recorder into the meeting, Okokuro testified that Baytops gave him permission to tape record the meeting, saying "If this is the way you want to do business, that's fine with me." Id. at 39. Some time later, Baytops became frustrated with Okokuro and asked him to turn off the tape recorder. Okokuro said he did so. Id. at 21-22, 39.

42. The tape recording itself was not offered into evidence at trial.
43. The Court finds that Okokuro's testimony regarding this meeting was more credible than that of Miller and Baytops. Although the Court does not believe Miller and Baytops were lying on the stand, it finds that they merely misunderstood what Okokuro was saying when he removed the tape recorder from his pocket. Id. at 21.
44. The Court therefore finds that Okokuro asked for and received permission to tape record the meeting, and complied with Baytops's eventual request to stop taping the meeting.
45. Baytops assigned Okokuro to a new supervisor following this incident.
46. Because Baytops believed Okokuro's behavior at the meeting violated work rules, she scheduled a pre-disciplinary conference for October 15, 1996. Id. at 70.
47. On October 25, 1996, Okokuro filed a discrimination claim with the Equal Employment Opportunity Commission ("EEOC").
48. On October 28, 1996, Okokuro received a one day suspension for taping the meeting without permission. Okokuro believes that this suspension was part of the pattern of harassment he had suffered at DPW. Id. at 41.
49. Because Miller and Baytops honestly believed Okokuro had been taping the meeting, the Court finds that Okokuro's

suspension, though predicated on a faulty perception of the facts, was not motivated by discriminatory animus.

50. Okokuro appealed that suspension to the Commission. On April 20, 1998, the Commission found that there was no basis for the suspension and expunged it from Okokuro's personnel records.

51. Okokuro filed a Complaint with this Court on April 19, 2000.

II. CONCLUSIONS OF LAW

Okokuro brings suit pursuant to Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e-2000e-17 (1994), for disparate treatment and being subjected to a hostile work environment because of his race and national origin.

Okokuro cannot prevail on his claims because he failed to prove by a preponderance of the evidence that the Defendants' actions were motivated by discriminatory animus. In other words, although Okokuro was mistreated by Miller and twice unjustifiedly disciplined, he was not the victim of discrimination.

As a threshold matter, the Court finds that the annual interview, during which White asked Okokuro about his car and clothing, is time-barred under Title VII. At trial, Okokuro proved by a preponderance of the evidence that: (1) White asked him what kind of car he drove and how he could afford his car and clothes; (2) Miller would occasionally call him stupid or dumb in

front of his colleagues; (3) Miller issued Okokuro with a reprimand that was later expunged from Okokuro's record; and (4) Okokuro received a one-day suspension, which was expunged from his record, because Miller and Baytops thought he had been taping their meeting without first obtaining their consent. Of these acts, only Okokuro's being disciplined and verbally abused by Miller occurred within Title VII's 180 day statutory filing period. See 42 U.S.C. § 2000e-5(e)(1) (1994). Neither party offered any date for the annual review during which White asked Okokuro about his financial situation, and it would be unreasonable for the Court to infer that this occurred within the 180 day filing period. Nor can this Court invoke the continuing violations doctrine to revive claims based on that incident. The events proven at trial, even assuming they were the result of discriminatory animus, were simply isolated and sporadic events rather than a pattern of discrimination against Okokuro. See West v. Philadelphia Elec. Co., 45 F.3d 744, 754-56 (3d Cir. 1995). The events involved different people and different circumstances, and, with the exception of Miller's verbal abuses, occurred with little frequency. Moreover, as discussed below, the events occurring within the filing period were not the result of discrimination against Okokuro. Thus, the relevant incidents for purposes of Okokuro's claims include only the two times Okokuro was disciplined and the verbal abuses of Miller. Those

incidents, unlike many of the facts alleged in Okokuro's Complaint but not discussed at trial, do not give rise to Title VII liability.¹

To establish his hostile work environment claim under Title VII, Okokuro must have proved by a preponderance of the evidence that: (1) he suffered intentional discrimination because of his race or national origin; (2) that discrimination was regular and pervasive; (3) that discrimination detrimentally affected him; (4) a reasonable person would have been detrimentally affected by it; and (5) respondeat superior liability existed because the employer knew or should have known of the harassment and failed to take prompt remedial measures. See, e.g., Kunin v. Sears Roebuck & Co., 175 F.3d 289, 293 (3d Cir. 1999). The chief basis of Okokuro's hostile work environment claim is Miller's frequent verbal abuses. Although the Court is satisfied that Okokuro proved all of the other elements of his claim, there was no evidence produced at trial that could lead to a conclusion that

¹ Okokuro's pleadings alleged many incidents not discussed during trial. For example, Okokuro had maintained that, at the Girard Office, Grant had called him an "Oreo Cookie" and had referred to his marriage as an "unfortunate" example of "jungle fever." Okokuro had also claimed that, while at the Elmwood Office: (1) he found a condom and Oreo Cookies that someone had anonymously placed in his desk drawer; (2) degrading printed materials, directed at him, were distributed throughout the office; and (3) the Elmwood Office Manager, Ms. Collins, asked him to "produce his drug money." Because no testimonial evidence of these events was offered at trial, the Court can only conclude that they did not occur.

Miller's treatment of Okokuro was the result of discriminatory animus. Moreover, Miller's disrespectful treatment of Okokuro, without more, does not necessarily give rise to Title VII liability; Title VII only makes it unlawful for an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. §2000e-2(a)(1). Because harassment is only actionable if it is severe enough to alter the conditions of the victim's employment, claims cannot be based simply on "the ordinary tribulations of the workplace, such as the sporadic use of abusive language . . . and occasional teasing." Faragher v. Boca Raton, 524 U.S. 775, 786-87 (1998). Indeed, Title VII was not intended to create a general civility code for the workplace. Id. at 787. In this case, Okokuro could not prove that Miller's abusive treatment, which consisted of sporadic teasing and yelling, was directed at him because of his race or national origin. Accordingly, Okokuro's hostile work environment claim cannot stand.

Neither has Okokuro made out a claim for disparate treatment based on his race or national origin. To establish a prima facie case of disparate treatment under Title VII, Okokuro must have proved by a preponderance of the evidence that he: (1) is a member of a protected class; (2) is qualified for his position;

and (3) suffered an adverse employment action under circumstances that would give rise to an inference of discrimination. Jones v. School Dist. of Philadelphia, 198 F.3d 403, 410-12 (3d Cir. 1999); Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1066 n.5 (3d Cir. 1996). Assuming Okokuro established his prima facie case, and rebutted a legitimate non-discriminatory reason offered by the Defendants, he would still bear "the ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against [him]." Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981).

Because Okokuro is an African-American of Nigerian origin, he is a member of two protected classes. Okokuro is also qualified for his job at DPW. As the Defendants have not presented argument to the contrary, the Court will also assume that Okokuro's suspension and reprimand constitute adverse employment actions. The success of Okokuro's claim for disparate treatment depends on whether the circumstances of those adverse employment actions give rise to an inference of discrimination and, even if so, whether Okokuro proved that they were the result of discrimination.

As discussed above, claims based on White's questioning Okokuro about his financial means are time-barred. Assuming they were not, however, Okokuro did not prove that such treatment of him was disparate; although Okokuro testified that Robinson was

not asked similar questions, he did not divulge Robinson's race or national origin. Thus, the Court cannot infer that White's questioning of Okokuro constituted disparate treatment motivated by Okokuro's membership in a statutorily protected class.

Although Okokuro may indeed be correct that White had singled him out, there is no evidence that she singled him out because of his race or national origin.

Okokuro similarly failed to prove that Miller's abusive treatment and reprimand were motivated by discriminatory animus. Although Miller's personal dislike for Okokuro was obvious during the trial, Okokuro offered no evidence that Miller's dislike for him was the result of racial or national origin discrimination. Thus, the Court can only conclude that Miller treated Okokuro poorly simply because he disliked him, not because of his race or national origin. Moreover, because Okokuro presented no evidence that Miller had treated similarly situated employees differently, he was unable to address Miller's contention that he was equally rude and obnoxious to all of the DPW employees under his supervision. Miller's treatment of Okokuro, though lamentable, is not actionable under Title VII.

Finally, Okokuro's suspension, which was later expunged by the Commission, was not the result of discriminatory animus. Rather, Baytops and Miller merely misunderstood what Okokuro said when he removed the tape recorder from his pocket. Based on

their mistaken belief that Okokuro had been recording the entire meeting, they suspended Okokuro for one day. Okokuro's suspension was therefore the result of miscommunication, not invidious discrimination based on his race or national origin.

Because Okokuro has not shown that he suffered an adverse employment action under circumstances that would give rise to an inference of discrimination, he has failed to prove his prima facie case. Okokuro has also not carried his ultimate burden of proving that the adverse employment actions were the result of discrimination. He has therefore not demonstrated that he is entitled to relief under Title VII. Accordingly, the Court will enter judgment in favor of the Defendants and against Okokuro.

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O R D E R

AND NOW, this day of May, 2001, in consideration of the evidence presented at a bench trial held on the day of April 18, 2001, and based on the Court's Findings of Fact and Conclusions of Law from that trial, it is **ORDERED** that judgment is **ENTERED** in favor of the Defendants, Don Jose Stovall and the Commonwealth of Pennsylvania, Department of Public Welfare, and against the Plaintiff, Anthony D. Okokuro.

BY THE COURT:

JAMES MCGIRR KELLY, J.